

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

The Sawyers and Lerner Building, LLC,

Plaintiff,

Case No: 2:16-cv-11003
Honorable Denise Page Hood

v.

Auto Club Lamppost, LLC, et al.

Defendants.

**ORDER DENYING MOTION TO DISMISS AND REQUEST FOR
SANCTIONS [Dkt. No. 78] AND GRANTING MOTION TO
TERMINATE RECEIVERSHIP AND CANCEL BOND [Dkt. No. 79]**

This action stems from Defendants' default on a \$10.25 million dollar promissory note and loan issued by Plaintiff's predecessors-in-interest with respect to a commercial property in Dearborn, Michigan. At this point, the property at issue is owned by Plaintiff, after being purchased by Plaintiff at a Sheriff Sale in August 2018 and the redemption period expiring in February 2019, without action by Defendants. The current, successor Receiver ceased performing on or about March 8, 2019, and Plaintiff is in control of the property. Defendants no longer have any interest in the property, nor does the Receiver. Recently, the parties filed two motions, both of which were addressed by the undersigned at a hearing held on April 11, 2019.

Plaintiff filed a Motion to Terminate Receivership and Cancel Bond. At the hearing, the parties stipulated that the Receivership should be terminated and bond canceled. Accordingly, the Motion to Terminate Receivership is granted, the Receiver is discharged and the Receiver's bond is canceled. An Order Terminating Receivership and Canceling bond will be entered concurrent with the entry of this Order.

Defendants filed a Motion to Dismiss for Failure to Prosecute and Request for Sanctions Pursuant to Court Order. The portion of that motion asking the Court to dismiss Plaintiff's cause of action is denied. Two days before Defendants filed their motion, the Court had issued to Plaintiff an Order to Show Cause Why the Case Should Not be Dismissed for Failure to Prosecute ("Order to Show Cause"). Plaintiff timely responded to the Court's Order to Show Cause, with justifications sufficient to dismiss the Order to Show Cause. Although Defendants state that Plaintiff still has not engaged in discovery, the argument set forth by Defendants to dismiss Plaintiff's cause of action is largely based on Plaintiff's failure to do anything to move the case forward in the last few months. Defendants' motion to dismiss is denied without prejudice, for the reasons stated on the record and those set forth by Plaintiff's counsel in his responses to the Order to Show Cause and the Motion to Dismiss.

As to Defendants' request for imposition of sanctions, the Court previously held

that Defendant(s) may be entitled to sanctions for having to file a motion to challenge Plaintiff filing a state court action, but the Court “h[e]ld in abeyance any final determination regarding sanctions until this cause of action has been resolved.” Dkt. No. 64, PgID 1439. This cause of action has not been resolved. Accordingly, Defendants’ request for imposition of sanctions is denied without prejudice as premature.

At the hearing, the Court also reset several dates, as follows:

Discovery Cut-Off: May 28, 2019

Dispositive Motion Deadline: June 11, 2019

Final Pretrial Conference: If no dispositive motion is filed, the Final Pretrial Conference will be held on July 11, 2019, at 4:30 p.m. If a dispositive motion is filed, the July 11, 2019 Final Pretrial Conference will be adjourned until a date set at the dispositive motion hearing.

Trial: Will be set at the Final Pretrial Conference

Accordingly,

IT IS ORDERED that Plaintiff’s Motion to Terminate Receivership and Cancel Bond [Dkt. No. 78] is GRANTED.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss for Failure to Prosecute and Request for Sanctions Pursuant to Court Order [Dkt. No. 79] is DENIED WITHOUT PREJUDICE.

IT IS ORDERED.

Dated: April 24, 2019

s/Denise Page Hood

United States District Court Judge